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In the Supreme Court of the United States

OCTOBER TERM, 1970

No. 1175

JOHN KERR,

Petitioner,

v.

STATE PUBLIC WELFARE COMMISSION,

Respondent.

On Petition for a Writ of Certiorari to the Court of Appeals of the State of Oregon

BRIEF FOR RESPONDENT IN OPPOSITION

LEE JOHNSON
Attorney General of Oregon

JACOB B. TANZER
Solicitor General

THOMAS H. DENNEY
Assistant Attorney General
State Office Building
Salem, Oregon 97310
Phone (503) 378-4402
Counsel for Respondent

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OPINION BELOW

Petitioner's statement is accepted.

JURISDICTION

Petitioner's statement is accepted.

QUESTION PRESENTED

Petitioner's statement of the question presented is argumentative. Respondent offers the following instead:

> The Oregon Relatives' Responsibility Law makes a spouse, parent, or child liable, on a scale propor-

tionate to his gross income and to the number of persons dependent on that income, for monthly contributions to reimburse the State, in whole or in part, for public assistance funds extended to that person's spouse, children, or parents. Does such a law violate either the Due Process Clause or the Equal Protection Clause of the Fourteenth Amendment?

STATUTES INVOLVED

Petitioner's omission of the definitions of certain terms used in the Oregon Relatives' Responsibility Law may give a misleading impression as to the breadth of the law. Accordingly, the following section of the law is set forth below.

"ORS 416.010. For purposes of ORS 416.010 to 416.260:

* * *

"(3) A 'needy person' is one who is eligible for public assistance under the laws of the state.

"(4) 'Relative' or 'relatives' mean the living husband, wife, father, mother, son or daughter 21 years of age or over of an applicant for or a recipient of public assistance.

"(5) 'Total cost' means the total amount of public assistance of any type furnished by the Public Welfare Division or the county departments to a recipient for a given period."

Petitioner's omission of the Relatives' Contribution Scale included in ORS 416.060(1) may give a misleading impression as to the extent of a given relative's liability and as to the standard by which the extent of that liability is determined. Accordingly, the Relatives' Contribution Scale is set forth on the following page.

RELATIVES' CONTRIBUTION SCALE

Gross annual income of responsible relatives in one family in dollars		Number of persons dependent upon income									
		1	2	3	4	5	6	7	8	9	10
		MONTHLY PAYMENTS REQUIRED (in dollars)									
Over	But not Over										
0	5,000	0	0	0	0	0	0	0	0	0	0
5,000	5,500	10	0	0	0	0	0	0	0	0	0
5,500	6,000	20	0	0	0	0	0	0	0	0	0
6,000	6,500	30	0	0	0	0	0	0	0	0	0
6,500	7,000	40	10	0	0	0	0	0	0	0	0
7,000	7,500	50	20	0	0	0	0	0	0	0	0
7,500	8,000	60	30	10	0	0	0	0	0	0	0
8,000	8,500	70	40	20	0	0	0	0	0	0	0
8,500	9,000	80	50	30	10	0	0	0	0	0	0
9,000	9,500	90	60	40	20	0	0	0	0	0	0
9,500	10,000	100	70	50	30	10	0	0	0	0	0
10,000	10,500	Tot. Cost	80	60	40	20	0	0	0	0	0
10,500	11,000	Tot. Cost	90	70	50	30	10	0	0	0	0
11,000	11,500	Tot. Cost	100	80	60	40	20	10	0	0	0
11,500	12,000	Tot. Cost	Tot. Cost	90	70	50	30	20	10	0	0
12,000	12,500	Tot. Cost	Tot. Cost	100	80	60	40	30	20	10	0
12,500	13,000	Tot. Cost	Tot. Cost	Tot. Cost	90	70	50	40	30	20	10
13,000	13,500	Tot. Cost	Tot. Cost	Tot. Cost	100	80	60	50	40	30	20
13,500	14,000	Tot. Cost	Tot. Cost	Tot. Cost	Tot. Cost	90	70	60	50	40	30
14,000	14,500	Tot. Cost	Tot. Cost	Tot. Cost	Tot. Cost	100	80	70	60	50	40
14,500	15,000	Tot. Cost	Tot. Cost	Tot. Cost	Tot. Cost	Tot. Cost	90	80	70	60	50
15,000	15,500	Tot. Cost	Tot. Cost	Tot. Cost	Tot. Cost	Tot. Cost	100	90	80	70	60
15,500	16,000	Tot. Cost	Tot. Cost	Tot. Cost	Tot. Cost	Tot. Cost	Tot. Cost	100	90	80	70
16,000	16,500	Tot. Cost	Tot. Cost	Tot. Cost	Tot. Cost	Tot. Cost	Tot. Cost	Tot. Cost	100	90	80
16,500	17,000	Tot. Cost	Tot. Cost	Tot. Cost	Tot. Cost	Tot. Cost	Tot. Cost	Tot. Cost	Tot. Cost	100	90
17,000	17,500	Tot. Cost	Tot. Cost	Tot. Cost	Tot. Cost	Tot. Cost	Tot. Cost	Tot. Cost	Tot. Cost	Tot. Cost	100
17,500		Tot. Cost	Tot. Cost	Tot. Cost	Tot. Cost	Tot. Cost	Tot. Cost	Tot. Cost	Tot. Cost	Tot. Cost	Tot. Cost

STATEMENT OF THE CASE

Petitioner's statement of facts is literally correct, but may be misleading. Petitioner was not required in these proceedings to reimburse the Public Welfare Division for the total amount of public assistance extended to his father. He was held liable for the sum of $420, in partial reimbursement of the $2,561.52 extended to his father over a period of 18 months in 1964-1965 (R. 58).

Respondent acknowledges that the Federal question presented herein has been properly raised and preserved.

REASONS FOR DENYING THE WRIT

A. The Oregon Relatives' Responsibility Law Does Not Impose a Tax.

Contrary to petitioner's argument, the sums collected under the Oregon Relatives' Responsibility Law are not taxes. The Law makes a spouse, parent, or child liable for monthly contributions to reimburse the State, in whole or in part, for public assistance funds extended to that person's spouse, children, or parents. In this way, it simply requires those members of the recipient's immediate family who have a well-recognized common-law or statutory obligation to support him, and who have the financial ability to do so, to assume at least part of that obligation, rather than imposing the entire financial burden upon the State. Such a law is not a tax, but a legitimate regulation of family status, well within the police powers of the State.

B. The Constitution Does Not Prohibit the States from Looking to a Person's Immediate Family for His Support Before Supporting Him at Public Expense.

Petitioner's assertion that "support of the poor has been a public duty for centuries" is neither entirely true nor dispositive of this case. Historically, laws for the relief of the poor have often and properly looked first to a person's immediate family for his maintenance and support. For example, as early as 1601, the English poor law required the parents, grandparents, and children of "every poor, old, blind, lame and impotent person, or other poor person not able to work," to support such relatives at a rate to be assessed by the local justices of the peace, upon pain of forfeiting 20 shillings for every month they failed to do so. Poor Law of 1601, 43 Eliz. 1, c. 2, § 7.

Whatever the desirability, as a matter of social policy, of making the State absolutely liable for the support of needy persons, without regard to the financial condition of their immediate family, such a course is clearly not mandated by the Constitution. Laws providing for the relief of the poor do not automatically abolish one's common-law or statutory obligation to support the members of his immediate family.

C. The Oregon Relatives' Responsibility Law Is Not Discriminatory.

Petitioner asserts that the Oregon Relatives' Responsibility Law discriminates between persons similarly situated, because because other persons with

similar relationships are excluded from liability. That is simply not true. The law makes the spouse, the parents, and all children of a welfare recipient liable for contribution according to the same scale. What petitioner may be complaining about here is the fact that the State is not required, as a procedural matter, to locate all relatives who are liable under the law and join them in one action before it can require any one relative to pay the amount for which he is liable. However, this fact does not give rise to a Constitutional question. Each relative's liability under the law is fixed, and the person proceeded against has a right of contribution from those other relatives who are also able to pay. *Mallatt v. Luihn,* 206 Or. 678, 702-705, 294 P.2d 871, 882-883 (1956).

D. There Is No Conflict in State Court Determinations of the Federal Question Presented.

The Oregon Relatives' Responsibility Law is similar in all material respects to the laws found in most other states (and the District of Columbia) making the members of a person's immediate family liable for the support of persons confined in state mental institutions. Such laws have generally been upheld against attacks on Federal Constitutional grounds, including those made by petitioner here. See, *e.g., Beach v. Government of District of Columbia,* 116 U.S. App. D.C. 68, 70-71, 320 F.2d 790, 792-793, cert. den. 375 U.S. 943 (1963); *Department of Mental Health v. Coty,* 38 Ill. 2d 602, 604-606, 232 NE.2d 686, 687-688 (1967); *State v. Estate of Rase-*

man, 18 Mich. App. 91, 98-104, 170 N.W.2d 503, 506-509 (1969);[①] Annot., 20 A.L.R. 3d 363 (1968).

The only case cited by petitioner in which such a relatives' responsibility law was held unconstitutional is *Department of Mental Hygiene v. Kirchner*, 60 Cal. 2d 716, 36 Cal. Rptr. 488, 388 P.2d 720 (1964), vacated and remanded 380 U.S. 194 (1965), reaff'd 62 Cal. 2d 586, 43 Cal. Rptr. 320, 400 P.2d 321 (1965). However, *Kirchner* cannot help petitioner here, because it was not decided under the Federal Constitution. After this Court vacated the judgment in *Kirchner* and remanded the cause for clarification with regard to whether the decision was based on Federal law, state law, or both, the California Supreme Court carefully explained that its decision was based on its

> "* * * construction and application of California law, regardless of whether there is or is not compulsion to the same end by the federal Constitution." 62 Cal. 2d at 588, 43 Cal. Reptr. at 330, 400 P.2d at 362 (1965).

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① But *cf.* the later case of *Miller v. State*, 18 Mich. App. 145, 171 N.W.2d 3 (1969), which struck down an amended version of the Michigan statute on the dual ground that (1) basing the relative's monthly liability to pay on his net taxable income was arbitrary and unreasonable, because taxable income was not a valid indication of the relative's ability to pay, in view of possible loopholes in the Federal tax laws; and (2) adopting *taxable* income as the test of the relative's liability was an unconstitutional delegation of state legislative power to the United States Congress, since Congress controls the law which determines taxable income.

However, even assuming, arguendo, that that case was rightly decided, neither of the grounds relied on therein can serve as a basis for attacking the Oregon Relatives' Responsibility Law, because Oregon bases the relative's liability on his *gross* income, and on the number of persons dependent on that income as well.

It may be noted in passing that the United States Court of Appeals for the Ninth Circuit has characterized the *Kirchner* case in dictum as an example of a state court according more extensive rights than those granted by the Constitution and laws of the United States. See *Garcia v. United States,* 381 F.2d 778, 782 (9th Cir. 1967).

Finally, it may also be noted that comment in law reviews was almost uniformly critical of the *Kirchner* decision, despite the usual tendency of such journals to hail novel social-policy decisions as "progressive." Several commentators considered that the California court had abused its review powers by making the legislative determination that institutionalized persons should henceforth be supported exclusively by state revenues. See, *e.g., Notes,* 49 Cornell L.Q. 516, 520 (1964); 77 Harv. L. Rev. 1523, 1524 (1964); 16 Hastings L. J. 129, 133-134 (1964); 63 Mich. L. Rev. 562, 568 (1965); 12 U.C.L.A. L. Rev. 605, 613-614 (1965). Others criticized the decision on the more pragmatic ground that the loss of relatives' contributions in most states would necessitate a considerable increase in state revenues in order to maintain state institutions at even their current, frequently inadequate levels. See, *e.g., Notes,* 13 Kan. L. Rev. 298, 304 (1964); 39 N.Y.U. L. Rev. 858, 865 (1964). Practically all disagreed with the California court's conclusion that the *Kirchner* decision was required as a matter of equal protection.

CONCLUSION

Nothing in the Constitution prevents a State from looking to the members of a person's immediate family for his support before extending financial assistance to him as a needy person, at the expense of the general public. That is the only object and the only effect of the Oregon Relatives' Responsibility Law. The petition for a writ of certiorari should be denied.

Respectfully submitted,

LEE JOHNSON
Attorney General of Oregon

JACOB B. TANZER
Solicitor General

THOMAS H. DENNEY
Assistant Attorney General
Counsel for Respondent

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